

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA Nos.2576 & 2577/M/2008
Assessment Years: 2001-02 & 2002-03**

ACIT, Cir. 6(1), R. No.506, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Briggs Trading Co. Pvt. Ltd., Continental Building 135, Dr. A.B. Road, Worli, Mumbai – 400 018 PAN: AAACB4674J
(Appellant)		(Respondent)

Present for:

Assessee by : Shri B.S. Sharma, A.R. & Shri Dalpat Shah, A.R.
Revenue by : Shri Anand Mohan, D.R.

Date of Hearing : 22.06.2016
Date of Pronouncement : 29.07.2016

ORDER

Per Sanjay Garg, Judicial Member:

The above titled appeals relevant to A.Y. 2001-02 & 2002-03 have been preferred by the Revenue against two separate orders dated 20.12.2007 relevant to A.Y. 2001-02 and 2002-03 respectively of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)].

2. The common issue raised in both the appeals is regarding the levy of penalty under section 271(1)(c) of the Act.

3. The brief facts of the case are that the Assessing Officer (hereinafter referred to as the AO) had made certain disallowances on account of notional interest out of the interest expenditure on account of money advanced by the assessee to M/s. Classic Credit. The AO held that the said advance was not in the normal course of business. He, therefore, calculated the notional interest

on the amount advanced by the assessee and disallowed the same out of the interest claimed by the assessee.

4. The second disallowance has been made by the AO on account of expenses incurred in connection with exempt income under section 14A of the Act. The AO also levied penalty under section 271(1)(c) with regard to the above stated disallowances.

5. In appeal, the Ld. CIT(A), considering the nature of the disallowances made by the AO and the explanation thereto given by the assessee, held that it was not a case of furnishing of inaccurate particulars of income or concealment of income. He observed just because these expenses have not been allowed by the AO on account of difference of opinion, it cannot be held that the assessee was guilty of any concealment of income or furnishing of inaccurate particulars of income. He therefore deleted the penalty so levied by the AO. Being aggrieved by the order of the Ld. CIT(A), the Revenue, thus, has come in appeal before us.

6. We have heard the rival contentions. Admittedly, the disallowance in relation to the interest expenditure on notional basis and on account of expenditure under section 14A has not been made on account of detection of some inaccurate particulars of income or concealment of income. The said disallowances have been made by the AO because of the difference of opinion regarding the admissibility of the same. Considering the nature of the expenses and the disallowances made by the AO, in our view, the Ld. CIT(A) has rightly held that it is not a case of furnishing of inaccurate particulars of income or concealment of income. Every case of disallowance of a claim or an expenditure cannot by itself be held as case of furnishing of inaccurate particulars of income or concealment of income. The Hon'ble Supreme Court in the case of "CIT vs. Reliance Petro Products" (2010) 322 ITR 158 (SC) held that a mere making of the claim, which is not sustainable in law, by itself, will

not amount to furnishing of inaccurate particulars regarding the income of the assessee. The said decision of the Hon'ble Supreme Court is squarely applicable to the facts of the present case. We, therefore, do not find any infirmity in the order of the Ld. CIT(A) in deleting the penalty levied by the AO under section 271(1)(c) of the Act.

7. Since the facts and circumstances in both the appeals are identical and in view of the findings given above, both the appeals of the Revenue are hereby dismissed.

Order pronounced in the open court on 29.07.2016.

Sd/-
(G.S. Pannu)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 29.07.2016.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.